

September 27, 2011

Phil Isenberg, Chairman  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Mr. Isenberg:

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the "Fifth Staff Draft Delta Plan" of August, 2011. We commend the Council and its staff for continuing to improve the Plan and incorporate public input with each successive draft.

EBMUD would like to highlight four areas in this letter, followed by a complete set of detailed comments and suggested text edits in the accompanying attachment. First, we have further input on the definition of a covered action, which at present includes a "cumulative" criterion that was not part of the 2009 legislation authorizing consistency determinations and would be difficult for a proponent to analyze. A second area of comment concerns the method to achieve reduced "reliance" on the Delta through regulation (Ch. 4, WR P1). The Department of Water Resources (DWR) was given a role in the 2009 legislation to award grant funds to regions that must first demonstrate reduced "dependence" on the Delta as a pre-condition for state funding. (SBx7 8, as modified by SB 855, Sec. 31(c)). Because DWR is responsible for the Urban Water Management Plan program and the Integrated Regional Water Management program, which are discussed as potential compliance mechanisms in Chapter 4 (WR P1), close coordination with DWR is necessary. Specific suggestions on this are offered in the attachment.

Third, the chapter on governance provides important clarifications on covered actions, even as questions remain about how the consistency determinations will enhance achievement of the co-equal goals when added to other regulatory review processes. The Council is required by statute "to establish and oversee a committee of agencies responsible for implementing the Delta Plan", but little detail is offered. This committee of agencies will be a critical forum to ensure that the various regulatory agencies function efficiently and in coordinated fashion.

Finally, while the finance chapter accurately describes the challenges to stable funding for the Delta Plan, it offers relatively little in the way of proposals that can be tested for public acceptance. Although the stakeholder community has similarly been unable to agree on specific alternative funding mechanisms, there is nonetheless a broad embrace of the

beneficiary pays principle. This concept is attractive to many water agencies because future investments can be justified with expected benefits. The recently introduced "stressor pays" concept, by contrast, requires a much more complex "look back" to assess responsibility for past harm to the ecosystem or other resource values. We believe that developing a beneficiary pays alternative is a more promising avenue to building support among Delta stakeholders.

We look forward to reviewing the Draft Environmental Impact Report when it is available and continuing to support your effort to develop a broadly supported and effective Delta Plan. If you have any questions, please contact Doug Wallace at (510) 287-1370.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alexander R. Coate".

Alexander R. Coate  
General Manager

ARC:DW

Attachment



**East Bay Municipal Utility District Comments  
September 2011 Fifth Staff Draft Delta Plan**

<b>Pg #, line #</b>	<b>Recommended Edits</b>	<b>Discussion</b>
Pg. 22, Table 1-1	Under California Environmental Protection Agency, modify the text in the Table as follows: “Develop and set water quality standards consistent with state and federal law to maintain <del>desirable aquatic species</del> <u>designated beneficial uses</u> in the Delta.”	The text should accurately present the legal responsibilities of the various agencies based on existing statutory language.
Pg. 22, Table 1-1	Under U.S. Bureau of Reclamation, strike the following text: “primarily serving agriculture”.	The text should accurately present the legal responsibilities of the various agencies based on existing statutory language.
Pg 22, Table 1-1	Under State Water Resources Control Board, modify the text in the Table as follows:  Required to develop and adopt criteria describing the flows deemed necessary to maintain water quality standards and protect public trust resources in the Delta. <del>Enforce water rights and ensure proper allocation/diversion of water in and out of Delta. Exercises water rights and water quality functions of the State consistent with State law.</del>	The text should accurately present the legal responsibilities of the various agencies based on existing statutory language.
Pg. 22, Table 1-1	Under National Marine Fisheries Service (NMFS), delete the following text: “restore access over impassible dams”.	The text should accurately present the legal responsibilities of the various agencies based on existing statutory language.
Pg. 57, lines 30-35	Edit the paragraph as follows:  In addition, a proposed plan, program, or project must have a “significant impact” as defined under Water Code section 85057.5(a)(4). <del>For this purpose, the Council has determined that “significant impact” means a change in existing conditions that is directly, indirectly, and/or cumulatively caused by a project and that will significantly affect the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.</del>	The description of actions that will be deemed to be “covered actions” is not consistent with the statutory language. In order to be a “covered action,” a plan, program or project must be deemed to have a significant effect on achievement of the coequal goals or flood control. A plan, program or project is not a covered action solely based on the fact that the action may “cumulatively cause” a change. To the extent that a number of small, individually insignificant projects in combination are part of a plan or program that will have a significant impact on achievement of the coequal goals or flood control, the program or plan is a “covered action.”

Pg #, line #	Recommended Edits	Discussion
Pgs. 82+, lines 26-30	This section entitled, “Water Reliability Element”, should be rewritten to indicate that the method of incorporating this provision into an Urban Water Management Plan or IRWMP would be administratively handled by DWR through its management of the UWMP and IRWM Programs.	The criteria and requirements of an Urban Water Management Plan (UWMP) and Integrated Regional Water Management Plan (IRWMP) are developed and implemented by DWR. DWR should be responsible to develop guidelines/requirements for this provision. The proposed parts of a Water Reliability Element are not self-executing, just as law requiring 20% per capita reduction by 2020 was not, and development of guidance is required. The administrative process related to UWMPs and IRWMPs should be implemented by DWR, not the Delta Stewardship Council, as DWR is clearly responsible for those programs. After the point where DWR finds whether one or more parts of the WRE are satisfactory, the consequences would then differ (grant eligibility effectuated by DWR, Covered Action consistency by Council).
Pg. 83, line 1-7 and 13-27	Throughout this section the term “reduced reliance on the Delta” should be interpreted in a manner that is consistent with the terminology “reduce dependence” on the Delta as covered by SB 855 (2010) , which superseded SBx7 8 (2009) relating to Integrated Regional Water Management Plans (IRWMPs).	SB 855 (2010) established requirements for DWR to award grant funds under IRWMPs that “reduce dependence” on the Delta. DWR has already begun implementing this requirement and proponents were required to submit information in Jan. 2011 on this criterion to compete for grant funds. The Delta Plan should look to coordinate with DWR efforts and use terminology and meanings that are consistent. The DSC should defer to the DWR process which is already underway so as to avoid unnecessary duplication or conflicting direction to water users.
Pg. 83, lines 9-12	Edit the text as follows:  Identify how reliable water service will be provided for shortages managed for minimum periods of 6 months, 18 months, and 36 months in the event that diversions or exports from the Delta are interrupted, <u>or the maximum interruption period based on expert analysis and documented in a written report,</u> during an average water year, dry water year, and following three dry water years.	The interruption of water supply and contingency planning is an integral part of an Urban Water Management Plan where alternative water supply and water management strategies during a water shortage are addressed. The length of time before a reliable water supply can be regained varies by agency. EBMUD has studied this issue extensively, as documented in its Water Supply Management Plans for 2020 and 2040, and has made improvements to its local supply system and to the Mokelumne Aqueducts as they cross the Delta such that the maximum outage for the Aqueducts is 6 months. Plans are in place to restore service within 6 months for the most vital components of EBMUD infrastructure.



Pg #, line #	Recommended Edits	Discussion
Pg. 83, lines 28-37	This section regarding “regional water balance” should be rewritten in such a way that requires DWR to provide guidance on how to incorporate this provision into its Integrated Regional Water Management Plan requirements.	The criteria and requirements of an Integrated Regional Water Management Plan (IRWMP) are developed and implemented by DWR so DWR should be the entity to develop guidance on this and oversee implementation. Many technical issues would be involved in a “balance” calculation, similar to the many issues involved with interpreting a 20% per capita reduction by 2020. Additionally, IRWMPs may not align within single hydrologic regions, providing additional technical complications. The Council should coordinate closely with DWR on this subject as discussed above.
Pg. 84, lines 34-37	Edit WR R5 as follows:  The State Water Resources Control Board and/or the Department of Water Resources should require that proponents requesting a <u>change in new</u> point of diversion, <del>place of use</del> , or purpose of use that results in new or increased use of water from the Delta watershed should demonstrate that the project proponents have evaluated and implemented all other feasible water supply alternatives.	Many urban water suppliers have projected that even though per capita water use may be reduced or remain unchanged in the future, overall demand may grow as a result of LAFCO-approved annexations or additions to service area boundaries, as well as in-fill development. Because of this, the reference to changes in place of use should be eliminated.
Pg. 95, lines 35-40	Edit WR P2 as follows:  “ <u>With respect to CVP or SWP contracts</u> , all new contracts, contract modifications, contract renewals...”	This policy should be specific and should only apply to SWP and/or CVP contracts. Presumably, the intent of the recommendation is that DWR policies should also apply to transfers involving CVP contract supplies.
Pg. 112, line 20	Edit the line as follows:  “Positive changes in <u>the Delta ecosystem resulting from improved</u> flow or flow patterns benefit both humans and fish and wildlife.”	The recommended edit makes this the complete and accurate quote from the SWRCB report. It is the positive changes in the Delta ecosystem that benefit humans and fish. It is expected that these positive changes are the result of improved flow patterns.

Pg #, line #	Recommended Edits	Discussion
Pg. 112, lines 10-21	<p>Insert the following points after the 6 bulleted points:</p> <ul style="list-style-type: none"> <li>• Temperature and water supply modeling and analyses should be conducted to identify conflicting requirements to achieve both flow and cold water temperature goals.</li> <li>• A strong science program and a flexible management regime are critical to improving flow criteria. The SWRCB should work with the Council, the Delta Science Program, BDCP, and Interagency Ecological Program, and others to develop the framework for adaptive management that could be relied upon for the management and regulation of Delta flows.</li> <li>• Actual flows should be informed by adaptive management.</li> </ul>	<p>These additional key points were also included in the SWRCB's report (under Summary Determinations, pg 6) and should be included in the Plan. These points are essential to understanding the critical relationship between stream flows and cold water temperature goals.</p>
Pg. 185, line 30	<p>Edit as follows:</p> <p>“...should evaluate and modify flood control management procedures for reservoirs upstream of the Delta with consideration for sea level rise, changes in timing and form of precipitation, <u>enhanced ecosystem functions</u>, and changes in water supply operations to alleviate potential Delta flooding.”</p>	<p>One of the considerations under this recommendation should be to also provide for enhanced ecosystem functions. Storing water in upstream reservoirs and releasing it when there is an ecosystem benefit may be possible without impacting water supply reliability. Better forecasting tools might help reduce the risk from flood damage and increase flexibility in reservoir operations. EBMUD's Water Quality and Resource Management Program (WQRMP), a requirement of EBMUD's Federal Energy Regulatory Commission (FERC) Joint Settlement Agreement, includes a specific criterion to: “Examine how revisions to the flood control requirements of the U.S. Army Corps of Engineers and the pattern of the flood flow releases could be modified to support restoration of ecological processes, and not create undue risk of flood damage.”</p>
Pg. 206, lines 34-36	<p>Edit as follows:</p> <p><del>“To the extent possible, user fees should be based on the amount of water used, or for stressors, the volume of the contaminants discharged.”</del></p>	<p>This statement implies that water users are the only beneficiaries, or stressors, of water resources. The Council should specifically identify the many other beneficiaries/stressors in the Delta and include them in any related fee system.</p>



Pg #, line #	Recommended Edits	Discussion
Pg. 210, line 5	<p>Edit as follows:</p> <p>“In general, <del>human activities that stress the system</del> <u>implementing a beneficiary pays</u> system should be the starting point for a financial strategy.”</p>	<p>The “stressor pays” concept overlaps significantly with other, existing mitigation requirements under CEQA, Clean Water Act, etc. An assessment of other “unaccounted for stresses” would require a laborious and controversial review and apportionment of responsibility for past harm to resources. By contrast, a beneficiary pays system is more incentive-based and is more widely accepted by stakeholders that can anticipate a return on investment.</p>
Pg. 211, lines 20-27	<p>Edit as follows:</p> <p><del>The Legislature should authorize the Delta Stewardship Council should develop and propose to the Legislature a system of to develop</del> reasonable fees for beneficial uses and reasonable fees for those who stress the Delta ecosystem, <del>and apply these fees to the operational costs of the Delta Stewardship Council, the Delta Conservancy, and the Delta Protection Commission to allow implementation of the Delta Plan.</del> These fees would be developed in an open and transparent process. <del>Operating costs of the Delta Stewardship Council, Delta Conservancy, and Delta Protection Commission should be pre-funded for a period of 10 years. As previously discussed, the annual budget of the new governance structure is approximately \$50 million.</del></p>	<p>The Legislature must approve (by a two-thirds vote under Proposition 26) any new fees to be imposed under the Delta Plan. However, operating expenses for the agencies listed should be recognized as public benefits and not financed under a beneficiary/stressor pays system.</p>
Pg. 212, lines 10-12	<p>Edit as follows:</p> <p><u>Evaluate and make recommendations to the Legislature regarding a</u> <del>Establish a statewide public goods charge (or broad-based user fee) for water. The Legislature should create a public goods charge (similar to the energy public goods charge created in 1996) on urban water users and agricultural users.</del></p>	<p>The concept of a public goods charge (PGC) applied to water use is distinct from the PGC in the electric sector, where most or all of the revenue is returned to the same utility that collected the funds. A PGC on water that funds public benefits (e.g. ecosystem costs) more closely resembles a tax, where the revenues are controlled by the state. The Council should conduct extensive public outreach on any PGC proposal before making any specific proposal, recognizing that not all public benefits in the Delta are necessarily statewide benefits.</p>